

The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 19] NEW DELHI MONDAY, JANUARY 19, 1953

ELECTION COMMISSION, INDIA**NOTIFICATION***New Delhi, the 19th January 1953*

S.R.O. 160.—WHEREAS the election of Shri K. Koti Reddi of Guntha Bazaar, Nagarajupet, Cuddappah, to the Legislative Assembly of the State of Madras, from the Cuddappah constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri P. Sessaiah, Chairman, Municipal Council, Cuddappah;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 108 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BELLARY.*Thursday, the 8th day of January 1953***PRESENT:**Sri N. D. Krishna Rao, M.A., Bar-at-Law, I.C.S.—*Chairman.*Sri D. Rangayya, B.A., B.L.—*Member.*Sri K. P. Sarvothama Rao, B.A., B.L.—*Member.***ELECTION CASE No. 1 OF 1952**

(Election Petition No. 34 of 1952 before the Election Commission, India).

BETWEEN:P. Sessaiah—*Petitioner.***AND**

1. K. Koti Reddi.

2. Gongala Peddi Reddi.

3. Mandi Veera Reddi.

4. Gajulapalle Veerabhadra Rao.

} *Respondents.*

This Election Case coming on for final hearing before us on the 18th day of December 1952, in the presence of Sri T. S. Narasingh Rao, and Sri R. Ranganathan, advocates for the petitioner, and of Sri P. Basi Reddi, advocate for the 1st respondent, and respondents 2 to 4, being absent, *ex parte*, and having stood over till this day for consideration, the Court delivered the following:

JUDGMENT

(The judgment of the Tribunal was delivered by the Chairman).

Sri P. Seshalah, one of the four unsuccessful candidates for election to the Madras Legislative Assembly from the Cuddapah Constituency has lodged this election petition, claiming a declaration that the election of the returned candidate namely the 1st respondent Sri K. Koti Reddi is void and that he himself has been duly elected. According to the return of the election, the petitioner secured 13,689 valid votes and the 1st respondent secured 13,742 valid votes so that the latter won by a majority of 53 votes. The other three unsuccessful candidates who secured 10,694, 7,110 and 1,690 votes respectively have been joined as respondents 2 to 4 to the petition.

2. The grounds put forward in the petition are briefly these. Firstly, the counting of the votes, which took place on 2nd February 1952 was rushed through with very great speed giving wide scope for errors. As there were five candidates and 140 polling booths, no less than 700 ballot boxes had to be opened and counted. The total number of valid votes counted came to 46,925. Yet the actual counting was finished in about 10 hours. "The petitioner honestly felt that having regard to the smallness of the difference between the 1st respondent and himself, there was sure to be mistake in counting". He applied to the Returning Officer under the proviso to Rule 48 for a recount, but the application was rejected. The Returning Officer did not follow the procedure prescribed in the rules for ensuring that votes were properly counted. He did not record the account of ballot papers in Form 14 at the stage required by Rule 46 (vi), nor compare them with the record of rejected ballot papers in Form 15 and with the presiding officers' ballot paper account in Form 10 prior to the declaration. Upon a comparison of Form 10 and Form 14 accounts, it is seen that in 9 out of the 140 polling booths, a total of 78 ballot papers were actually found in excess of number of ballot papers which ought to have been found in them. Thus 78 votes have been improperly received and, according to the petitioner all of them have been given in favour of the 1st respondent. The candidates and their agents were made to merely sit with the Returning Officer and were not permitted to check the serial numbers of the ballot papers, or the correctness of the counting which was conducted at 8 tables. The above defects have materially affected the result of the election and the fact could be verified by a recount and scrutiny of the votes in all the ballot boxes. In the second place, a number of polling personnel who would have voted for the petitioner were disfranchised, because they were appointed or served with orders of appointment after 14th January 1952. They could not therefore apply in time for postal ballot papers, which had to be done under Rule 37 at least 7 days before the date 21st January, 1952 fixed for the poll. Hence the petitioner wants voting by postal ballot to be held again. In this connection, he has also pointed out that the Returning Officer had originally fixed the last date for receiving the postal ballot papers as 18th January 1952. Subsequently, the Returning Officer altered the date to 23rd January, 1952, two days beyond the date fixed for the poll, which is illegal and beyond his powers. Some of the electors entitled to vote by postal ballot were not informed of the altered date and did not exercise their franchise. In the third place, out of 31 postal ballot papers which were invalidated, nearly 25 were given in favour of the petitioner. They were wrongly invalidated on the ground that the signatures of the electors were attested by officials other than magistrates and the petitioner wants them to be counted for him. Finally, two corrupt practices are alleged against the 1st respondent. The 1st respondent or his agents are stated to have obtained ballot papers from voters of different booths and had them put in the ballot boxes of the 1st respondent in various other booths. The 1st respondent or his agents are also stated to have taken advantage of the two days' interval between 21st January, 1952 and 23rd January, 1952 to procure by undue influence votes by postal ballot. The petitioner claims a declaration that he has been duly elected on the foot of both the clauses of Section 101 of the Representation of the People Act, 1951.

3. Respondents 2 to 4 have remained *ex-parte*. The 1st respondent contends in his written statement that there were no defects or irregularities at the time of counting as alleged, that the polling personnel were afforded all facilities to exercise their franchise that the 31 postal ballot papers were rightly rejected as invalid and that the charges of corrupt practices are false.

4. The issues framed are.—

(1) Is the counting of votes vitiated by mistakes and non-compliance with the rules as alleged in the petition?

(2) Was the statement in Form No. 14 not duly recorded?

(3) Was there no proper scrutiny of the votes? If so how many of the votes counted ought to have been rejected?

(4) Was the postal voting vitiated by non-compliance with the rules as alleged in the petition?

(5) Were postal votes improperly rejected and if so to what extent?

(6) Whether all or any of the above defects materially affected the result of the election?

(7) Did the 1st respondent or his agent or any other person with their connivance obtain ballot papers from any voters and put them in boxes belonging to different booths?

(8) Did the 1st respondent procure postal votes by undue influence?

(9) Whether the Returning Officer unreasonably rejected the petitioner's application for recounting and whether there ought to be a recounting of votes.

(10) To what relief?

5. *Issues 1 to 3 and 9.*—These issues are inter-connected and may be conveniently dealt with together. At the commencement of the trial of the petition on 17th September, 1952, the petitioner made a separate application I.A. No. 12 of 1952 for recount and scrutiny of the votes given for the 1st respondent and for himself. During the trial, the petitioner let in no oral evidence besides his own, and the 1st respondent contended himself with examining the Returning Officer as his witness. We found it unnecessary to enter into the question whether the Returning Officer unreasonably rejected the petitioner's application Ex. A-1 for recount, because we were satisfied that there were sufficient other reasons for allowing I.A. 12 of 1952. We accordingly allowed I.A. 12 of 1952 by our order made on 6th October, 1952, which is appended to this judgment. The result of our recount and scrutiny, so far as ballot papers from the several polling booths which were recorded as valid are concerned, was set out in the following joint memo filed on 19th October, 1952.

"Joint memo filed by 1st Respondent and the petitioner.

The number of valid ballot papers found are correct in all the paper packets of the 1st respondent and the petitioner, except in the following ballot paper packets which have been reserved for scrutiny and arguments.

1st respondent			Petitioner		
Serial No.	Booth No.	Polling Station No.	Serial No.	Booth No.	Polling Station No.
(1)	33.	240-1 M.	(1)	17.	239-1 W.
(2)	40.	243-1 M.	(2)	54.	249-2 W.
(3)	44.	245-1 M.	(3)	58.	250-4 W.
(4)	87.	262-2 W.	(4)	128.	279-2 W.
(5)	99.	268-2 W.	(5)	135.	283-1 M.
(6)	114.	273-1 M.			

(Sd.) P. BASI REDDI.—19-10-1952.

(Sd.) K. RANGANATHAN,

(Sd.) S. NAGARAJAN

Advocate for petitioner.

Advocates for 1st respondent,

6. We shall now deal with the defects found in respect of the above eleven ballot paper packets *sciatim*. In the ballot paper packets of Booth Nos. 33, 40, 99 and 114 the numbers of admittedly valid ballot papers found were 107, 115, 73 and 58 respectively, as against 105, 116, 72 and 57 entered on the outside of the packets and in the No. 14 account Ex. A-5. The numbers of votes counted by the Returning Officer are therefore less by 2 in respect of Booth No. 33, more by 1 in respect of Booth No. 40, less by 1 in respect of Booth No. 99 and less by 1 in respect of Booth No. 114. The net result in respect of these four packets is that 3 votes have to be added in favour of the 1st respondent.

7. In the ballot paper packet of Booth No. 87 (Cuddapah Municipality 2-W) a bundle of 43 admittedly valid ballot papers was found, and in addition a bundle of 100 ballot papers the serial numbers of which showed that they were authorized for use only at Booth No. 44 (Nachinayapalli 1-M). The number entered on the

outside of the packet and in the No. 14 account was only 43. Correspondingly, in the ballot paper packet of Booth No. 44 (Nachinayapalli 1-M) only 330 admittedly valid ballot papers were found as against 430 entered on the outside of the packet and in the No. 14 account. At the time of arguments, the main controversy between the parties related only to this defect in respect of Booth Nos. 87 and 44, because they realised that only if the 100 votes concerned were invalidated could the 1st respondent be unseated? Sri Narasinga Rao for the petitioner contends that the 100 ballot papers which were authorized for use at Booth No. 44 were actually used at Booth No. 87 and should therefore be rejected as invalid. Sri Basi Reddi for the 1st respondent contends that the 100 ballot papers were actually used at Booth No. 44 alone and that the defect found by us can only be due to their having been placed by mistake in the packet of Booth No. 87 by the peon who sealed the covers at the time of the Returning Officer's counting.

8. We have no hesitation in agreeing with Sri Basi Reddi on the point. The numbers written on the outside of the packets clearly show that only 43 ballot papers were found in the ballot box of Booth No. 87 and 430 ballot papers were found in the ballot box of Booth No. 44. The evidence is that the entries on the outside of each packet, including the number of ballot papers therein, were written in the space provided for the purpose, by either the Checking Officer or one of the clerks who was assisting him at the counting table, immediately after the counting, and before the packet was sealed under the Returning Officer's supervision. The entries were made in the usual course of official duty and it has not even been suggested that any of the Checking Officers or clerks were interested in the 1st respondent. We have perused the corresponding check slips and find the same numbers 43 and 430 entered in them. It is impossible to suppose that 43 was written by mistake for 143 in regard to the Cuddapah Municipality booth and 430 was written for 330 by an extraordinary coincidence of mistakes in regard to the Nachinayapalli Booth from which the ballot papers had been abstracted. Sri Narasinga Rao's only answer is that the number of ballot papers entered on the outside of each packet should be ignored as it is not one of the particulars statutorily required to be written under Rule 46 (viii). But it is one of the particulars coming within the term "Description of contents", required to be written by executive instructions—see paragraph 9 of Government of Madras Memorandum No. 3647/51-2 Public (Elections), dated 26th December, 1951. We do not consider that we would be justified in ignoring any relevant circumstance, especially when there is no positive evidence whatever to show how ballot papers issued at Nachinayapalli could have found their way into a ballot box of Cuddapah Municipality. Another clinching circumstance is that the exact number of 100 ballot papers missing from the packet of Booth No. 44 is found in a separate bundle in the packet of Booth No. 87. It is common ground that during the counting, the ballot papers were separated into bundles of 100 each. The bundle of 100 ballot papers in question must have therefore been picked out and tied up by the counting personnel. It is impossible to support that the counting personnel separated the 100 unauthorised ballot papers which they found in Booth No. 87 without disclosing that these votes were invalid, and put them in a bundle in the packet for the same booth, although they transferred their number to the account of Booth No. 44. Sri Ranganathan, the learned Council for the petitioner, himself elicited in his cross-examination of R.W. 1 the Returning Officer on 20th September, 1952, "There is scope for mistakes in putting the bundles in the proper covers. There may be mistakes. They were put in my presence. I was not verifying whether the bundles were being put in the proper covers or not. If there is a mistake the totals on the covers and the number of papers inside would be different". The petitioner's attempt at that time was to show that all sorts of mistakes were possible during the counting and that a recount by the Tribunal was therefore necessary. But now Sri Narasinga Rao takes up the opposite position that such mistakes were not at all likely, for the purpose of his argument that as laid down in the rules, the ballot papers are preserved in the packets in the same state as they were in the ballot boxes; and this makes all the difference. R.W. 1's evidence taken with the circumstances noted above leaves no doubt in our minds, that the bundle of 100 ballot papers in question came from Booth No. 44, and happened by mistake to be put and sealed in the packet of Booth No. 87 instead of in the unwieldy packet of Booth No. 44. We hold that the bundle represents valid votes and that the 100 votes have been correctly counted for the 1st respondent.

9. Turning to the ballot paper packets of the votes counted for the petitioner, we found 411 admittedly valid votes in the packet of Booth No. 17, while the number entered on the outside of the packet and in the account No. 14 is 410. In the packets of Booth Nos. 54 and 58, the numbers of ballot papers found tallied with the numbers entered in the No. 14 account and the only defect was that the

numbers were not written on the outside of the packets, which is immaterial. In each of the packets of Booth Nos. 128 and 135, one admittedly invalid ballot paper authorized for use in some other booths were found. The net result is that the petitioner has secured 1 valid vote less than the number counted for him.

10. As already indicated, Sri Narasinga Rao's position at the time of arguments was that the Returning Officer was very careful in discharging his duties during the counting and avoided mistakes as far as possible. He did not challenge the Returning Officer's evidence that Form 14 account was recorded immediately after the counting of each box. His only complaint is that as the counting was conducted at 8 tables and with great speed, the Returning Officer could not have supervised the counting properly. There is no point in this complaint inasmuch as we have now recounted and scrutinized the votes given for the 1st respondent and the petitioner. On the 1st issue, our finding is that there were mistakes in counting in respect of five ballot boxes (four of the 1st respondent and one of the petitioner) as noted above and there was no substantial non-compliance of the rules. On the 2nd issue, we find that the statement in Form 14 was duly recorded. On the 3rd issue, we find that there was no adequate scrutiny of the votes and that 2 votes for the petitioner ought to have been rejected. On the 9th issue, we find that the first part does not arise for consideration and we answer the second part in the affirmative.

11. Issue 4.—The points urged at the time of the arguments against the postal votes were firstly, that the Returning Officer had no power under the Act or the rules made thereunder to fix a date for the receipt of postal ballot papers, which was different from the date fixed for poll, and secondly that having once fixed a date he had no power to alter or to extend it. In the present case, the Returning Officer originally fixed 18th January, 1952, as the last date for the receipt of postal ballot papers, whereas the last date fixed for the poll was 21st January, 1952. On 18th January, 1952, or 19th January, 1952, he extended the last date to 23rd January, 1952. We consider it unnecessary for the purpose of the present case to deal with the question of the Returning Officer's powers in this respect as a question of law. Assuming without admitting that both the points urged by the petitioner are well founded, it would mean that there was a non-compliance with the provisions of the Act or the rules. Under clause (c) of sub-section (2) of Section 100 of the Act, it would be a ground for interference by us with the election, only if the result of the election has been materially affected. Here it is common ground that except for one member of the military service, all the postal voters were polling personnel. We find from the Returning Officer's evidence that the reason why the last date for receiving the postal ballot papers was extended was that conflicting appointments of polling personnel were originally made and that these were reconciled only by 19th January, 1952. The Returning Officer acted *bona fide* in extending the date, in accordance with the executive instructions in Ex. B-5 from the Government, that the last date could be 2 days previous to the date fixed for counting. His evidence further shows that 78 persons to whom postal ballot papers had been issued by the 18th were informed of the extended date and that for the remaining 152 persons the extended date was noted even when the postal ballot papers were sent. Out of the total of 230 persons to whom postal ballot papers were issued, 201 persons actually voted. The petitioner has adduced absolutely no evidence of even a single member of the polling personnel having been unable to vote owing to the original fixing of the date earlier than 21st January, 1952, or owing to their having been not informed of the extended date. He took time on 19th September, 1952, to produce and examine witnesses for the purpose but did not produce any on the next day of hearing and closed his side with his own evidence. We do not even have any definite evidence as to how many members of the polling personnel were disfranchised by receiving belated orders of appointment or how many members of the polling personnel were voters for the Constituency. Sri Ranganathan for the petitioner relies on the petitioner's own vague oral evidence "53 appointments were so made (after 11th)..... Polling personnel employed for the Cuddapah Constituency belong to Cuddapah Taluk". Obviously, no weight can be attached to such self-serving and uncorroborated assertions, when the petitioner has deliberately refrained from examining the witnesses and filing documents to corroborate them. There is no basis for supposing that all or any of the convenient number of 53 polling personnel appointed after 11th January, 1952, did not or could not apply for postal ballot papers, nor can we infer from the mere fact that they belong to Cuddapah Taluk that they were persons entitled to vote for the Cuddapah Constituency. Thus there is absolutely no proof that the alleged non-compliance with the rules has affected the election in any way. We find accordingly on this issue that the postal voting was not vitiated by a non-compliance with the rules.

12. *Issue 5.*—The petitioner's contention is that none of the postal ballot papers ought to have been invalidated on the ground of want of attestation by a magistrate, because the voters were misled by the printed intimation sent to them into thinking that any Officer could attest. Ex. A-16 is the printed intimation in Telugu and is an exact translation of the letter of intimation in Form 13. The petitioner relies on the fact that paragraph 4 therein does not mention "Magistrates" but mentions "Officers". There is no substance at all in this contention. The full sentence in paragraph 4 runs thus:

"The officers who are empowered to attest ballot papers have been specified in the instructions set out on the ballot paper".

It refers to the instructions set out on the ballot papers and instruction 4 (e) on the ballot papers reads—

"An elector shall obtain the attestation of his signature on the back of this form—* * *

(e) In the case where the elector is a person who has been permitted under sub-rule (2) of rule 37 to give the vote by postal ballot by a magistrate".

The voters could not possibly have been misled if they had read the instructions on the ballot paper, as advised by paragraph 4 of Ex. A-16. Rule 47(3) lays down that if there is no due attestation i.e. here by a magistrate, the postal ballot paper shall be invalid. We find on this issue that the postal votes were not improperly rejected.

13. *Issue 6.*—When we recounted the postal votes, we found that out of 23 ballot papers accepted for the 1st respondent, 2 bore more than one mark; and out of 69 accepted for the petitioner, 1 was attested by the Municipal Commissioner and not by a magistrate and 1 bore more than one mark. Therefore 2 postal votes for each of the 1st respondent and for the petitioner have to be rejected as being invalid under Rule 47(3). The result of our recounting the other ballot papers has already been set out above. The 1st respondent has actually secured 3 more valid votes than those counted for him by the Returning Officer and the petitioner has actually secured 1 vote less. There is no dispute regarding the votes rejected by the Returning Officer as invalid. Thus the 1st respondent has really got a majority of 57 votes instead of 53 as per the return. We find on this issue that none of the alleged defects have materially affected the result of the election.

14. *Issue 7.*—The petitioner let in absolutely no evidence in support of the alleged corrupt practice forming the subject matter of this issue. Sri Narasinga Rao argued that because the bundle of 100 ballot papers authorized for use in Booth No. 44 was found in the packet of Booth No. 87, some person must have collected the 100 ballot papers from the Nachinayapalli voters and put them in the Cuddapah Municipality Booth. On this basis, which is a mere conjuncture not founded on any evidence, he contended that a minor corrupt practice had been proved. But as already stated above, we are satisfied that the bundle of 100 papers has been found in the wrong packet, because of an accidental mistake in packing and sealing them, which must have been committed by the Returning Officer's peon. We find this issue in the negative.

15. *Issue 8.*—Sri Narasinga Rao does not press this issue and has conceded that he has been unable to adduce any evidence in support of the charge against the 1st respondent. We find this issue also in the negative.

16. *Issue 10.*—In the result, the petition fails and is dismissed with costs. We fix the advocate's fee at Rs. 350.

Pronounced in open Court this 8th day of January 1953.

(Sd.) N. D. KRISHNA RAO,
Chairman.

(Sd.) D. RANGAYYA,
Member.

(Sd.) K. P. SARVOTHAMA RAO,
Member.

NOTE—Bill of costs will follow.

APPENDIX

ORDER IN I.A. 12 OF 1952, DATED 6TH OCTOBER, 1952

(The order of the Tribunal was delivered by the Chairman.)

"This is an application by the petitioner in Election Case No. 1 of 1952 for recount and scrutiny of the votes given for the first respondent and for himself. He relies on the fact that upon a comparison of Form No. 10 and Form No. 14 accounts, the total number of ballot papers found in the ballot boxes of all the five candidates as per Form 14 accounts is less than the total number which ought to be in the ballot boxes as per Form 10 accounts, in respect of each of 67 booths, and is in excess in respect of each of 9 booths. He seeks an inference that the counting by the Returning Officer was not correct and that the ballot papers of some booths have been put in different other booths. The principles relevant to the question as to when a Court may order a recount, have been discussed in *Lakshman Ayyar vs. Rajan Aiyar* (1). It is well settled that no candidate is entitled to a recount and scrutiny as a matter of right, merely for the asking. The petitioner has to make out good grounds for believing that there have been mistakes on the part of the Returning Officer and that a recount and scrutiny is necessary in the interests of justice. At the same time, from the very nature of the case, positive proof of miscount at an election cannot be given before the recount takes place.

2. This application was made before the commencement of the trial of the Election Case on 17th September, 1952. It was opposed by the first respondent on the ground that the question of recounting forms the subject-matter of the 9th issue and ought not to be decided before evidence was taken. The Tribunal felt that the first respondent ought not to be denied the opportunity of showing that there is no *prima facie* case for a recount and scrutiny and accordingly allowed both sides to adduce evidence.

3. On 18th September, 1952, however, the first respondent agreed to a recount of the votes in the ballot boxes relating to the nine booths in which ballot papers are found to be in excess according to the accounts. The manifest reason was that no other explanation was possible for the excess votes, except that there were mistakes either on the part of the Presiding Officers or of the Returning Officer, and that mistakes in the counting by the Returning Officer were more probable in the circumstances. The votes given for all the candidates in the 9 booths were therefore recounted and scrutinised by the Tribunal on 18th September, 1952 and 19th September 1952. It has to be mentioned that recount was actually of 10 booths, because with regard to the two booths in one of the polling stations concerned, viz., polling station No. 283, the petitioner was not sure as to which booth had the excess votes.

4. At the recount and scrutiny of the 10 booths, it was found that the number of votes in all the ballot boxes had been correctly counted by the Returning Officer. But unauthorised ballot papers relating to other booths were found in 7 ballot paper packets. There were no unauthorised votes in the ballot paper packets of the first respondent. But there were two unauthorised votes altogether in two ballot paper packets of the petitioner and 77 unauthorised votes in one ballot paper packet of the 2nd respondent Peddi Reddi, and 70 unauthorised votes in four ballot paper packets of the 4th respondent Veerabhadra Rao. Thus it was clearly established that the votes were not properly scrutinised by the Returning Officer with a view to find out whether the serial numbers of the ballot papers authorised for use at one polling booth were actually used in other polling booths.

5. Nothing in the evidence adduced by the first respondent offered any explanation for the reception of the unauthorised votes found in the 7 ballot paper packets. In fact, the Returning Officer, who was the only witness examined by the 1st respondent, admitted that if he had detected the discrepancies in the serial numbers of the ballot papers, he would have rejected the votes. So far as the Returning Officer is concerned, there can be no doubt that he and his assistants did not scrutinise the votes as contemplated by Rule 47(c).

6. It is true, that no unauthorised votes are shown to have been counted for the first respondent who is the successful candidate. But the votes in only 10 out of 140 polling booths have been recounted and scrutinised. Just as unauthorised votes have been counted for the petitioner and respondents 2 and 4 in

7 of the booths, it is quite possible that in the remaining 130 booths there are unauthorised votes counted for the other candidates including the first respondent. In view of the proved fact that the votes have not properly been scrutinised by the Returning Officer, the Tribunal is of opinion that the fact that the unauthorised votes detected in the 10 booths chance to relate to the petitioner and respondents 2 and 4 makes no difference. It is not unlikely that unauthorised votes given for the first respondent may be found in the remaining 130 booths. The number of votes polled by the petitioner in all the 140 booths is 13,620 and that by the first respondent is 13,717. The difference is only 97. If the postal votes are taken into account, the majority of the votes in favour of the first respondent is, only 53. The invalidity of even a comparatively few votes counted for the first respondent is therefore likely to materially affect the result of the election. The Tribunal will be in a position to satisfactorily decide the several issues framed in this case only after all the votes given for the petitioner and the first respondent are recounted and scrutinised. For the purpose of this application, it is sufficient to say that the petitioner has *prima facie* satisfied the Tribunal that the validity of the votes counted has not been properly scrutinised by the Returning Officer and that a recount and scrutiny is necessary in the interests of justice between the parties. We accordingly order a recount and scrutiny of the votes given for the first respondent and the petitioner.

(Sd.) N. D. KRISHNA RAO,
Chairman.

(Sd.) K. P. SARVOTHAMA RAO

(Sd.) D. RANGAYYA,

Members of the Election Tribunal Bellary"

Petitioner's witness

1. P. Seshalaiah Chetty (Petitioner)

Respondents' witness

1. T. R. Venkataraman (Returning Officer)

Petitioner's exhibits

- | | | | |
|---------------|---|---|--|
| A-1/2-2-1952 | . | . | Application of P. W. 1 (petitioner) for recounting. |
| A-2/21-1-1952 | . | . | Ballot paper account (Form No. 10) of all the polling stations of the Cuddapah Assembly Constituency (Pages 1 to 410). |
| A-3/2-2-1952 | . | . | Form of account of ballot papers (Form No. 14) of G. Veerabhadra Rao (pages 1 to 8). |
| A-4/2-2-1952 | . | . | Do. Do. of Gongola Peddi Reddi Pages 9 to 16). |
| A-5/2-2-1952 | . | . | Do. Do. of K. Koti Reddi (pages 17 to 24). |
| A-6/2-2-1952 | . | . | Do. Do. of M. Veera Reddi (pages 25 to 32). |
| A-7/2-2-1952 | . | . | Do. Do. of P. Seshalaiah Chetty (Pages 33 to 40). |
| A-8/2-2-1952 | . | . | Form of record of rejected ballot papers (Form No. 15) of G. Veerabhadra Rao (pages 41 and 42). |
| A-9/2-2-1952 | . | . | Do. Do. of G. Peddi Reddi (pages 43 to 50). |
| A-10/2-2-1952 | . | . | Do. Do. of K. Koti Reddi (pages 51 to 64). |
| A-11/2-2-1952 | . | . | Do. Do. of M. Veera Reddi (pages 65 to 74). |
| A-12/2-2-1952 | . | . | Do. Do. of P. Seshalaiah Chetty (pages 75 to 90). |
| A-13/2-2-1952 | . | . | Return of election (Form No. 16). |

- A-14/9-II-51 . . Public Notice (Form No. 1 of Cuddapah Assembly Constituency—English.
- A-15/9-II-1951 . . Do. Do. Telugu.
- A-16/ . . Sample form of Form No. 13.
- A-17/ . . Entries in the Register of applications for postal ballot papers of Cuddapah Assembly Constituency at pages 23 to 37.
- A-18/30-I-1952 . . Served copy of notice on all the candidates changing date of counting.
- A-19/2-2-1952 . . Telegram addressed to Revenue Divisional Officer, Rajampet.

Respondents' exhibits

- B-1/26-12-1951 . . Paragraph 7 of Annexure II of Returning Officer's (A. and P.) Circular No. 17 issued in Government's Memo. No. 3647/51-2, Public (Elections) Department at page 19.
- B-2/2-2-1952 . . Record showing the duration of the counting of Cuddapah Assembly Constituency.
- B-3/26-12-1951 . . Paragraph 4 of Annexure II of Returning Officer's (A and P) Circular No. 17 issued in Government's Memo. No. 3647/51-2, Public (Elections) Department, at page 15.
- B-4/26-12-1951 . . Instruction No. 8 (5) Do. at page 7.
- B-5/23-12-1951 . . Paragraph 1 of Government's Memo. No. 677/51-1, Public (Elections) Department.
- B-6/19-I-1952 . . Order of R. W. 1 extending time for postal ballot papers to 23-I-1952.
- B-7/19-I-1952 . . Copy of the letter sent to the persons who applied for postal ballot papers.
- B-8/2-2-1952 . . Order of R. W. 1 on Ex. A-1.

Tribunals' exhibit

- C-1/ . . Attendance register of persons appointed for counting for Cuddapah Assembly Constituency (pages 1 to 3).

[No. 19/34/52-Elec.III.]
(Sd.) N. D. KRISHNA RAO,

Chairman.

S.R.O. 161.—WHEREAS the election of Shri V. Chidanandam of Kamalakur P.O., Siddhout Taluk, Cuddappah District as a member of the Legislative Assembly of the State of Madras, from the Badval constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri B. Rama Reddy of 2/300, Subbi Reddy Kottala, Praddatur Town, Cuddappah District, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 85 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BELLARY

Thursday, the 8th day of January 1953

PRESENT:

Shri N. D. Krishna Rao, M.A., Bar-at-law, I.C.S.,—*Chairman.*
Shri D. Rangayya, B.A., B.L.,—*Member.*
Shri K. P. Sarvothama Rao, B.A., B.L.,—*Member.*

ELECTION CASE NO. 4 OF 1952

(Election Petition No. 130 of 1952 before the Election Commission, India).
BETWEEN:

B. Rama Reddi—Petitioner.

AND

1. V. Chidanandam.

2. Avadharam Venkatasubbaiah—Respondents

This Election Case coming on for final hearing before us on the 17th day of December 1952, in the presence of Sri P. Basi Reddi, advocate for the petitioner and Sri A. Bhujanga Rao and Sri R. Rangonathan, advocates for the 1st respondent, and the 2nd respondent being absent, *ex parte*, and having stood over till this day for consideration, the Court delivered the following.

JUDGMENT

(The judgment of the Tribunal was delivered by Sri D. Rangayya).

1. The petition alleges that for the election to the State Assembly from the Badwel constituency in Cuddapah District, the petitioner and the two respondents filed nomination papers, that on the date of scrutiny *i.e.*, 28th November 1951 the petitioner filed an objection petition before the Returning Officer with regard to the nomination of the 1st respondent, alleging that on the date of the nomination, the 1st respondent, as the Public Works Department Contractor, had undertaken a building work in Cuddapah Sub Division and special repairs to the Judge's quarters at Cuddapah and also repairs to Kamalakur tank in 1950-51, that these works were not finally checked up, and final bills and deposit amounts were not paid up, that the 1st respondent is therefore, disqualified under Section 7 clause (d) of Act XLIII of 1951 from being chosen to fill a seat in the Legislative Assembly of the Madras State, that the petitioner's contention was negatived by an order of the Returning Officer dated 30th November, 1951, that the acceptance of the nomination paper is improper and illegal, that the same has materially affected the result of the election and has rendered the entire election void. The petitioner prays that the election of the returned candidate namely the 1st respondent should be declared void.

2. The petition as originally filed raised only the question of the contract work relating to some building work and repairs to the Judge's quarters, but subsequently by an amendment, which was allowed (*vide* I.A. 18 of 1952) the work relating to the Kamalakur tank was included.

3. The 1st respondent, namely the returned candidate, filed a written statement and after the amendment was allowed, he filed an additional written statement. The main written statement refers to the repairs to the village chavadi at Kamalakur and special repairs to the Judge's quarters at Cuddapah. The additional written statement deals with repairs to Kamalakur tank. With regard to the repairs to the village chavadi at Kamalakur, it is contended that the work was completed and that final payment also was made prior to the filing of the nomination papers. With regard to the other two contracts, it is contended that they are piece-work contracts, that the works were finished long before the dates of nomination, that final measurements were taken, that there were no recoveries to be effected from him, that on the other hand money was due to him from the Government, that on 19th November, 1951, prior to nomination he actually relinquished his claims against the Government and thus put an end to the contract, that he had no subsisting interest in any contract at the time of the nominations, that the Sub Divisional Officer accepted his relinquishment and therefore he was not disqualified under Section 7 clause (d) of Act XLIII of 1951 and that the petition should be dismissed with costs.

4. The 2nd respondent did not appear or file any written statement.

5. The following issues have been framed:—

1. What was the date of nomination of the 1st respondent?

2. Whether before the date of his nomination the 1st respondent ceased to have any interest in the contract with the Government for repairs to the Judge's quarters at Cuddapah and to the Kamalakur tank?

3. Whether the 1st respondent is disqualified under Section 7 clause (d) of the Act, as alleged in the petition?

4. Whether the election is wholly void?

5. To what relief?

6. Issue No. 1:

In the petition it is alleged that the nomination papers were filed by the 1st respondent on or about the 19th and 20th November, 1951 (*vide* paragraph 5). The 1st respondent contended that he filed his nomination papers on 20th and 21st November, 1951 and not on 19th as stated in para 5 of the petition (*vide* paragraph 3). The nomination papers have been marked as Exhibits B-1 to B-5 and some of them are dated 20th November 1951 and some are dated 21st November 1951. There is no evidence before the Tribunal that any nomination papers were filed on 19th November, 1951. We find on this issue that the dates of nomination of the 1st respondent are 20th November and 21st November, 1951.

7. Issues 2 and 3:

These are the two main issues in the case.

8. In paragraph 7 of the petition, there is first of all a general allegation that on the date of nomination, the 1st respondent had an interest in a contract for the execution of works entrusted to him by the Department of Public Works, Government of Madras. In the objection petition filed by the petitioner before the Returning Officer, he stated that the 1st respondent is both a minor irrigation and P.W.D. contractor. The details first given in paragraph 7 of the petition after the general allegation, referred to a building work in Cuddapah Sub-Division and special repairs to the Judge's quarters at Cuddapah; but as stated already, by way of an amendment, repairs to Kamalakur tank was also included.

9. A faint suggestion was made during the trial that the 1st respondent was in the list of contractors maintained by the Public Works Department. The evidence however negatives it. The 1st respondent as R. W. 2 says that he was not a registered contractor. To the same effect is also the evidence of the Sub-Divisional Officer, R.W.1. On 28th July, 1951 the 1st Respondent sent an application, Exhibit B-13, to the Sub-Divisional Officer, praying that his name may be removed from the list of contractors in Madanapalli Division, P.W.D., apparently, on the assumption that he was one in the list of contractors maintained in that division. In reply to this, R.W. 1 sent Exhibit B-37 in which he made it clear that the 1st respondent was not a registered contractor and that his name was not in the list of contractors of Madanapalli Division. He also stated that inasmuch as the 1st respondent did not want to do any further works, and as he had completed the works given to him already and no works were pending, his name should be deemed to have been removed from the list of contractors in this Sub Division. Having regard to the evidence of R.Ws., 1 and 2, and Exhibit B-37, it should be held that the 1st respondent was not in the list of contractors maintained for Madanapalli Division and that, in any event, his name must be considered to have been removed from the list of contractors of the Cuddapah Sub-Division. There is nothing in the Representation of the People Act to the effect that the mere fact that the name of a person is in a list of contractors would by itself disqualify him from standing for election.

10. It would appear from the first respondent's evidence that he had been taking up some contract works, as minor irrigation contractor from the Revenue Department. He has however filed Exhibit B-42 to prove that no work was pending with him and that he was removed from the list of contractors by the Revenue Divisional Officer on 7th November, 1951. His oral evidence shows that he was paid for the work done by him on 19th November, 1951.

11. The main contest in the case relates to two contracts with the P.W.D. (1) relating to Judge's quarters at Cuddapah and (2) relating to repairs to the Kamalakur tank. The contention of the petitioner is that the first respondent had interest in those contracts on the dates of nomination whereas the contention of the first respondent is that he had no interest on those dates.

12. Before proceeding further, it would be better to have certain dates relating to these contracts. Exhibit B-11 is the piece-work contract relating to repairs to Kamalakur tank. It was originally estimated at Rs. 700-0-0 but ultimately the work done was valued at Rs. 1,250-0-0. Final measurements were taken on 7th August, 1951 and it was check-measured by R.W. 1 on 17th November, 1951. On

6th December, 1951 there was a revised estimate and the final bill was sent by the Sub-Divisional Officer to the Executive Engineer for pre-audit on 15th December, 1951.

13. The piece-work contract relating to the repairs to the Judge's Bungalow is Exhibit B-12 dated 2nd May, 1951 for an estimated amount of Rs. 1,400-0-0. Final measurements in his case were taken on 25th August, 1951; check-measurement was made by the Sub-Divisional Officer on 11th October, 1951; final bill was sent for pre-audit to the Executive Engineer on 17th October, 1951, by the Sub-Divisional Officer which was returned by the Executive Engineer with some remarks on 26th November, 1951, and re-submitted by the Sub-Divisional Officer to the Executive Engineer on 17th December 1951.

14. The case of the first respondent is that on 19th November, 1951 he relinquished his claims for payment by means of the letter, Exhibit B-16, and that that relinquishment was accepted by the Sub-Divisional Officer on 20th November, 1951. A decision in this case would largely depend upon an appreciation of the evidence relating to this document and the alleged acceptance and as to how far they came into existence on the dates they bear. Whatever that may be, it is found that as a result of this relinquishment, the final bills which were sent by the Sub-Divisional Officer were passed for nil payment. In one case viz., repairs to the Judge's Bungalow, it was passed for nil payment on 5th February, 1952 and in the other case it was passed for nil payment on 21st March, 1952.

15. From the evidence of the Sub-Divisional Officer, R.W. 1, it appears that the final bill with regard to the Kamalakur tank work was for Rs. 288-0-0 and that with regard to repairs to Judge's bungalow was for Rs. 113-0-0 (including the amount withheld in the prior bills). As a result of his relinquishment and the bills being passed for nil payment, the first respondent lost a sum of Rs. 400-0-0 and odd, and the Government profited to that extent. The evidence of R.W. 1 is also to the effect that at the time of his check-measurements, he did not find any defects in the works and that there were no recoveries to be effected from the 1st respondent. There is no evidence contra.

16. Before proceeding to discuss the alleged relinquishment letter, Exhibit B-16, and the endorsement of acceptance thereon, Exhibit B-18, it is necessary to refer to Section 7 cl. (d) of Act XLIII of 1951 (The Representation of the People Act). It reads as follows:—

“A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly, or Legislative Council of a State—

- (d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government.”

In this case, the contracts set up are those entered into by the 1st respondent himself with the Public Works Department and therefore, shorn of unnecessary language, Section 7 might be read as:

“A person shall be disqualified for being chosen as a member of of the Legislative Assembly—

- (d) If.....he has any share or interest in a contract.....for the execution of any works.....undertaken by the appropriate Government”.

17. One extreme contention that was put forward on behalf of the first respondent is that irrespective of the documents, exhibits B-16 and B-18, in view of the fact that the 1st respondent had admittedly performed the works undertaken by him under Exhibits B-11 and B-12, it should be held that there was no contract for the execution of any works on the dates of nomination, within the meaning of Section 7 cl. (d), the argument being that the section applies only to contracts under which works have still to be executed or what may be called executory contracts. What is required under Section 7 clause (d) is that the party, whose nomination is in question, should have had no share or interest in a contract for the execution of any works undertaken by the appropriate Government. It does not refer to the completion or otherwise of the works undertaken. The expression 'for the execution of works' appears to show the nature of the contract that would disqualify

and the fact which would disqualify is having 'share or interest' in such a contract. It appears to us that once it is proved that the person concerned has interest in a contract of that type, the disqualification would operate whether or not the work has been completed.

18. In the Madras Local Boards Act, Section 55(2) (c), in mentioning a similar disqualification, the words 'subsisting contract' are used. In *Athikesavan v. v. Ekambara Mudaliar* (1939-1 M.L.J. 420) His Lordship Pandrang Row J., held that the use of the word 'subsisting' would indicate that the disqualification refers to the existence of a subsisting contract, and not one which had ceased to exist. We are not quite certain that His Lordship meant to say that once the work was completed, the contract would not be a subsisting contract, even though payment had not been made. It is, however, enough to observe that in Section 7 cl. (d) of the Representation of People Act, we do not have the qualifying word 'subsisting'. In *Satyendrakumar Das versus Chairman of the Municipal Commissioners of Dacca* (I.L.R. 58 Calcutta, 180) the facts were: that the party concerned had performed his part of the contract, namely, execution of the work but had not received payment from the Municipal Council. It was held that the party must be considered to be interested in the contract when he had not received payment. Having regard to the decision in I.L.R. 58 Calcutta 180, it must be found that even though the works undertaken under Exhibits B-11 and B-12 might have been completed by the first respondent, he cannot, by that fact alone, be said not to have an interest in the contracts and that if in this case there is nothing more except the completion of the performance of work by the first respondent, he would still be having an interest in the contracts, Exhibits B-11 and B-12.

19. On 28th July, 1951 the 1st respondent wrote a letter Exhibit B-13, to the Assistant Engineer, P.W.D., Cuddapah in which he stated as follows:

"The Government of India have very recently enacted that any contractor to the Government should not contest the forthcoming Assembly Elections. I therefore request you to kindly remove my name from the list of contractors in Madanapalli division P.W.D.

"Since I wish to contest the elections, please make necessary arrangements to prepare final bills for both the works pending in my account and settle my accounts with you".

This letter presumably shows that the first respondent also understood that the preparation of final bills and the settlement of his accounts with the Department was necessary to enable him to contest the elections. In the document in dispute, viz. Exhibit B-16, the first respondent stated that he suspected that the Sub-Divisional Officer may not be able to pay him his final bills to enable him to contest the elections. So, the first respondent himself was never of opinion that the mere fact that he had performed his part of the contract would enable him to stand for election.

20. The Assistant Engineer took some steps in connection with the prayer made by the first respondent in the second paragraph of Exhibit B-13; and the checking of final measurements in the two cases and the sending of the final bill with regard to the repairs to the Judge's quarters on 17th October 1951 took place after Exhibit B-13. The reply to Exhibit B-13 was, however, given only on 14th November 1951, and that is Exhibit B-37. In that letter, nothing was stated about the final bills and settlement of accounts apparently because all that was not finished. But the first respondent was informed that he had completed all the works given to him and that he was not in the list of contractors.

21. On that very day, the first respondent wrote a letter to the Executive Engineer, which has been marked as Exhibit B-14. He referred therein to the two works undertaken by him and also completion of the same and that they were pending final payment. Then he stated as follows:—

"As I am contesting for the general seat in Badvel for Madras Assembly in the ensuing General Elections. I gave a petition to the S.D.O. Cuddapah on 28th July, 1951 for finalising and closing my accounts with the P.W.D. I understand that these final bills have to be passed by you before payment and I request for expediting payment and thus close my accounts with you before 20th November, 1951. 21st November, 1951 is the last day for filing of nominations".

The endorsement of the Executive Engineer's office on Exhibit B-14 shows that some queries were put to the office and some information was being gathered but

nothing substantial was done before 20th November, 1951 which would help the first respondent in the matter of finalising the bills or making the payments. In fact, from the details already given, it would be seen that even the check-measurement in respect of Kamalakur tank repairs was done only on 17th November, 1951 and the final bill was not even sent to the Executive Engineer's office before 21st November, 1951.

22. The case of the first respondent is that on 19th November, 1951 he gave an application, Exhibit B-16, to the Sub-Divisional Officer, which reads as follows:—

"Though I have applied to you to finalise my accounts even on 28th July, 1951 for works given to me in your Sub-Division, you did not effect the same.

"I sent a registered letter to the Executive Engineer on 14th November, 1951 for closing my accounts and to effect final payments. But nothing is heard from him so far. In the above circumstances, I suspect you may not be able to pay me my final bills to enable me to file my nomination paper in time for contesting the Assembly Elections since 21st November, 1951 is the last date for filing nomination.

"I hereby relinquish all my claims to the Government for the monies due to me from you towards final bills for works done in your Sub-Division. From today, I have no mutual contractual obligations with the P.W.D., on account of work contracted by me in Cuddapah Sub-Division".

There is the initials of R.W. 1 under date 19th November 1951 (Marked as Exhibit B-17) to show that he received Exhibit B-16 on that date. There is an endorsement which has been marked as Exhibit B-18 by the Sub-Divisional Officer which reads as follows:—

"H.C.

Accepted.

Government gains.

Pl. take copies".

This endorsement bears the initials under date 20th November, 1951. (H.C., evidently refers to Head Clerk; 'Pl.' is said to mean 'Please').

23. The contention of the first respondent based on Exhibits B-16 and B-18 is that he had given up his claims for monies due to him under the contracts and that, therefore, the contracts have come to an end and that the Government also had put an end to the contracts by virtue of R.W-1's endorsement of acceptance, Exhibit B-18 dated 20th November, 1951, the argument being that the Sub-Divisional Officer is entitled under Exhibits B-11 and B-12 to put an end to the contracts. So far as the petitioner is concerned, he denies firstly that Exhibits B-16 and B-18 came into existence on the dates they bear. He further contends that, in any event, they do not operate as a valid discharge of the obligations of the first respondent under Exhibits B-11 and B-12, that the Sub-Divisional Officer was not entitled to put an end to the contracts in any manner and therefore, Exhibits B-16 and B-18, even if true, do not help the case of the 1st respondent.

24. It is necessary first of all to see whether Exhibits B-16 and B-18 did come into existence before 21st November 1951.

25. Exhibit B-16 does not contain the office date seal of the Sub-Divisional Office. That office maintains what is called a 'Receipt Register'. In it, the receipt of this application is not entered. R.W. 1 in his evidence says that the receipt register is only for the Divisional Tappals and Tappals of the other Departments and that they do not register the letters received from private persons including the contractors. In another portion of his evidence, he stated that there is a register called 'Miscellaneous Receipt Register' maintained by his office besides 'Executive Engineer's Receipt Register' and in that Miscellaneous Receipt Register they register the papers received from Departments other than the Executive Engineer's Office. When questioned as to whether papers received from private persons are never entered in it, he deposed:

"I cannot say that papers received from private persons are never entered in it".

From the cross-examination of the witness, it appears that another letter Exhibit A-3, received from the first respondent bears the office date seal though it was received by R.W. 1 himself in person. So also Exhibits A-4, A-5 and B-13. At the

same time, it was also elicited in the course of re-examination that Exhibit B-25, which is a letter sent by the petitioner to R.W.-1, and Exhibit B-36, a letter from the petitioner to the Executive Engineer, do not contain the office date seals. This shows that there is no settled or uniform practice. It is also not established that under the rules relating to the Public Works Department offices, it is absolutely necessary that every paper received should either be entered in the Receipt Register or that office date seal should be put on every one of them.

26. We have referred to the language of the endorsement, Exhibit B-18, which directs the Head Clerk to make copies. The Sub-Divisional Officer, as R.W. 1. when questioned about this, deposed in his chief-examination as follows:

"Copies (were) necessary for sending to the Executive Engineer or anybody that might require them".

In the course of cross-examination he deposed as follows:

"By saying that copies might be required by others, I meant that the contractor himself might ask for it. The contractor and Executive Engineer only were meant by me when I said that others might ask for copies".

Therefore, the idea of R.W. 1 in directing copies to be made should be taken as being that they would be required to be sent to the Executive Engineer and the 1st respondent. There is no evidence before the Tribunal that any such copies were prepared or sent till, at any rate, 29th November 1951.

27. After the filing of nomination papers before the Returning Officer, a date was fixed by the Returning Officer for the scrutiny of nominations and it is common ground that that date is 28th November 1951. On 26th November 1951 the petitioner sent Exhibit B-25 to the Sub-Divisional Officer in which he stated that he came to know that the 1st respondent is a P.W.D. contractor and got a work i.e., special repairs to the Judge's Bungalow and that the final bill was pending in his office. Evidently, he did not know about the contract relating to repairs to Kama-lakur tank and did not mention it. He further stated as follows:

"If it is so, he is disqualified for filing his nomination. I want a certificate to that effect from you to prove the fact before the Returning Officer. In case, final payment is made the date on which it was paid may kindly be noted and given. Further, I want to know whether the above said work is completed, if not, who is executing that work.

"As it is a matter relating to the Elections and the scrutiny of nominations will be taken up on 28th, I request that the information may kindly be given urgently".

Exhibit B-25 shows that it was received by the Sub-Divisional Officer on 26th November, 1951 itself. The evidence of the petitioner is to the effect that R.W. 1 was evading to give information in writing and thereupon, he sent a telegram on the same day to the Executive Engineer, Exhibit A-6. The telegram says, among other things, that the Sub-Divisional Officer was refusing to give the information, that the same was required for election purposes and that directions should be given to the Sub-Divisional Officer to give the information and that the information was required on 28th. On 27th November the petitioner sent a letter, Exhibit B-36, to the Executive Engineer referring to the several facts and stating that no reply had yet been received for his telegram and that that day also he sent a reply paid telegram but to no effect and that a reply may be sent by the Executive Engineer through the messenger who was taking the letter Exhibit B-36 to him; and also direct the Sub-Divisional Officer by wire to furnish him with the information required in his petition. He also asked that a telegram furnishing the information may kindly be sent to the Returning Officer, Jammalamadugu to avoid delay.

28. On 28th November, 1951 the petitioner filed his objection petition before the Returning Officer and the same has been marked as Exhibit B-38. He therein referred to the several attempts to get information from the Sub-Divisional Officer and the Executive Engineer's Office and then stated:

"As such, I am not in a position to establish a *bona fide* fact because of the refusal of the Sub-Divisional Officer to furnish the important information for the reasons best known to himself. I, therefore, request you to take up the right cause, make enquiries and to do justice ... If I am given two days' time as per rules, I will prove my allegations by documentary evidence".

It would appear from the note made by the Returning Officer on Exhibit B-38 that the first respondent also wanted time to rebut the objections. Time was given by the Returning Officer till 30th November 1951.

29. There are a number of documents, dated 29th November 1951 to which reference has to be made here. Exhibit A-3 is a petition from the 1st respondent to the Sub-Divisional Officer. This petition was apparently filed because he had taken time for rebutting the objections raised by the petitioner. In A-3, he stated as follows:

"I have filed my nomination for Badvel Constituency for Madras State Legislative Assembly Elections, 1952. My rival candidate Sri B. Ramireddi has taken on objection that I am a contractor and that the Works contracted for are pending and that money is due to me from the P.W.D. I have taken time for my objections.

"I request you to clarify my position in relation to the Department and oblige. A reply may be given today alone as it is an urgent election matter".

On 29th November, 1951 there is an endorsement of the Sub-Divisional Officer on Exhibit A-3 asking the Head Clerk: "Did you not make it clear to the Contractor already?" and there is a reply by the Head Clerk in the affirmative and referring to the letter, Ex. B-37, dated 14th November 1951. Then, there is another endorsement of the Sub-Divisional Officer on the same date asking the Head Clerk to send a true copy of that letter once again to the first respondent. But what we have on record as a reply to Exhibit A-3 is the letter Exhibit B-30, dated 29th November 1951. This does not make any reference to the letter Exhibit B-37 nor is a copy of Exhibit B-37 sent along with this. It, however, says that the Sub-Divisional Officer has telegraphically communicated his report to the Returning Officer and it also makes reference to Ex. B-16 and says that the question of final payment does not, therefore, arise.

30. Exhibit B-26 is the letter from the Sub-Divisional Officer to the petitioner in reply to his petition, Exhibit B-25. Therein, he has stated that the 1st respondent executed special repairs to the District Judge's quarters at Cuddapah in that Sub-Division and that he has completed all the works entrusted to him, according to his contract, and that final bill was submitted to the Executive Engineer, Madanapalle division on 22nd October 1951 for 'pass order'. He further stated that the final bill was not paid till then. Then he stated that the first respondent gave a letter on 19th November 1951 relinquishing his claims to monies due to him on the final bill. With regard to the further work, that was being done in the Judge's quarters, it was stated that one Siddareddi was doing that work under a subsequent agreement. This letter does not make any mention of the repairs to the Kamalakur tank, apparently because in Exhibit B-25 the petitioner did not make any reference to it. The Sub-Divisional Officer must have considered that he ought to send a reply only to the points raised by the petitioner and nothing more.

31. Exhibit B-28 is the letter from the Sub-Divisional Officer to the Returning Officer. Therein also, he referred to the repairs to the Judge's quarters and stated that the work was done and final bill was prepared and sent to the Executive Engineer's office in October, 1951 and that the final bill could not be paid for want of sanction for the revised estimate. Then he refers to the letter, Exhibit B-16, and states that the first respondent has given in writing relinquishing to Government all his claims to monies due to him on final bills for works done in that Sub-Division and that the question of payment did not, therefore, arise and that there were no recoveries to be effected from the first respondent on account of the contracts and that on the other hand, an amount of nearly Rs. 400 was to the credit of the Government on account of this relinquishment. To the same effect, more or less, he sent a telegram to the Returning Officer and that has been marked as Exhibit B-29. Exhibit B-31 is the letter of the Sub-Divisional Officer to the Executive Engineer enclosing therein copies of a number of letters including copies of Exhibits B-16 and A-3.

32. Exhibit B-41 is a letter by the Executive Engineer to the first respondent in reply to his letter, Exhibit B-14. In Exhibit B-41, it is recited that the final bill with regard to the repairs to Judge's quarters was under check and that it would be passed and forwarded to the Sub-Divisional Officer and that the final bill with regard to the repairs to the Kamalakur tank was being awaited from the Sub-Divisional Officer and that it would be passed for payment on receipt. This is dated 29th November 1951.

33. In the letters written by R.W. 1 on 29th November 1951 while he made reference to Exhibit B-16, no reference was made to the endorsement, Exhibit B-18. Ex. B-31 shows that among the enclosures sent to the Executive Engineer, copy of Exhibit B-16 was included. But a copy of Exhibit B-18 was not sent along with it. The Sub-Divisional Officer, who was questioned about it, in his cross-examination stated:

"I did not expressly write in any communications to the petitioner, 1st respondent, Executive Engineer, or the Returning Officer that I released the 1st respondent from his obligations. But the purport of my communications is that".

At another place, he stated that the language of Exhibit B-26 implies that he accepted the relinquishment because he said that the question of payment to him or recoveries from him does not arise and that there was no recovery to be made from the first respondent.

34. In the petition, reference is made by the petitioner to a letter received by him from the Executive Engineer in reply to his telegram dated 26th November, 1951 and a copy of it was appended as 'Ex.B' to the petition. It is stated in it that 1st respondent was a contractor of the P.W.D., Cuddapah Sub-Division and that his accounts with the Department were not yet finalized. In the course of the evidence of the petitioner, an attempt was made to file a telegram which was said to have been received by the petitioner from the Executive Engineer. The Executive Engineer was being summoned by the petitioner and he also attended the trial of this case on a number of occasions. Still, the petitioner did not choose to examine him and that is why the letter of 27th November 1951 referred to in the petition and the alleged telegram said to have been received from the Executive Engineer could not be marked. There is thus no proof of these documents. A reference to this telegram is, however, found in Exhibit A-4, which is a letter of the first respondent to the Executive Engineer and it says that the Executive Engineer without knowing all the facts that took place till 16th November 1951 was pleased to give the telegram and an endorsement to the petitioner that the first respondent was a contractor and that final bills were pending.

35. On 30th November, 1951, the Returning Officer made enquiry into the objections raised by the petitioner. Exhibit B-39 is the statement filed by the first respondent in answer to the objections filed by the petitioner. Among other things, it says:

"The question of final bill does not arise inasmuch as I had relinquished my claim, communicated to the other contracting party, Assistant Engineer, and accepted by him".

It will be seen from this that the first respondent expressly referred in it to Exhibit B-18. Exhibit B-40 is the sworn statement of the first respondent taken by the Returning Officer. Therein, he refers to his having relinquished all his claims for payment and other things on 19th November 1951.

36. The Returning Officer passed an order which is in the following terms:

"Heard both sides and perused the documents filed by them. Recorded sworn statement of the candidate Sri V. Chitanandam. I am satisfied that the candidate has no interest in any subsisting contract by 20th November 1951. His nomination is accepted".

37. To complete the history, we have to refer to some more documents that have been filed in the case. Exhibit B-34 is a letter dated 15-12-1951 to the Executive Engineer in reply to Exhibit B-41 copy of which was communicated to the Sub-Divisional Officer. In Exhibit B-34, reference is made to the relinquishment by the 1st respondent of all the amounts due to him from the Government and stating that the bills would have, therefore, to be passed and the amount credited to the Government. Exhibit B-33 is a letter from the Assistant Engineer to the Executive Engineer and it is dated 31-1-1952. In this letter also, reference is made to Exhibit B-16. Exhibit B-32 is another letter from the Sub-Divisional Officer to the Executive Engineer and is also dated 31-1-1952 and in it also reference is made to Exhibit B-16. It further says in paragraph 6:

"No dues to or from Government have come to the notice subsequent to 19-11-1951".

and in paragraph 7 it is stated:

"No new contractors have taken the place of Sri V. Chitanandam in respect of either of the two works cited above".

Exhibit A-4 is a letter from the first respondent to the Executive Engineer, dated 10-12-1951 and it is in reply to Exhibit B-41. Among other things, it says:

"I originally decided to file my nomination on 19-11-1951. But since you did not take any action till that date, I could not file it that day and after consulting my lawyer, I gave relinquishment letter to the Assistant Engineer, Cuddapah, leaving all the money due to me on works done by me in the Cuddapah Sub Division to the credit of the Government, i.e., the Department. Then on 20-11-51 and 21-11-51 I filed two sets of nominations".

Then, it refers to the sworn statement given by him before the Returning Officer to the effect that he had relinquished his claims and that he has no interest in any contract work anywhere. Finally, the letter ends by saying:

"I, therefore, request you to cancel all my accounts. I have nothing to receive from the P.W.D. Cuddapah".

38. The question that has to be decided on this material is: whether Exhibits B-16 and B-18 came into existence on 19-11-1951 and 20-11-1951 the dates which they bear or whether they came into existence subsequent to 21-11-1951. The facts, viz., that Ex. B-16 does not contain the office seal, that there is no proof that it was entered in the Receipt Register, that no endorsement in terms of Exhibit B-18 was given in writing to the first respondent, that Exhibits B-16 and B-18 are not referred to in any communications by the Assistant Engineer till 29th November, 1951, that in Exhibit A-3 no reference is made by the 1st respondent to Exhibit B-16 while, on the other hand, he wanted a clarification of his position *vis a vis* the Department, all these would throw some amount of suspicion on the question as to whether Exhibits B-16 and B-18 came into existence on the dates they bear. At the same time, it appears to us that none of these things are conclusive on this question. As already stated, no rule has been pointed out which would oblige R.W.1 to enter all such papers in the Receipt Register and there is also no evidence that there is any uniform practice to enter all such papers in the Receipt Register. The absence of office date seal is inconclusive because even with regard to some of the other documents, which are admitted by both parties and filed either in the Assistant Engineer's office or in the Executive Engineer's office, there is no such date seal.

39. By far the most difficult point against the first respondent appears to be his communication, Exhibit A-3, in which one would have expected him to make mention of Exhibit B-16. The endorsements (which, however, are not separately marked) on Exhibit A-3 make reference to Exhibit B-37 and not to Exhibit B-16. That would however show, at best, that the Assistant Engineer might not have bestowed sufficient attention to Exhibit B-16 and not necessarily that Exhibit B-16 was subsequently introduced into the record. We have already shown that as a matter of fact in the reply sent to Exhibit A-3, reference is made to Exhibit B-16. Exhibit A-3 is of the same date, namely 29-11-51, on which date several documents emanated from the Assistant Engineer's office and in all of them Ex. B-16 is referred to. Unless it can be stated that Exhibit A-3 and the endorsements thereon came into existence sometime earlier in the day and that Exhibits B-16 and B-18 were cooked up before the communications of that date were sent by the Assistant Engineer to the several persons concerned, it would be impossible to hold that Exhibits B-16 and B-18 are spurious documents and that they did not come into existence on 19-11-51 and 20-11-51, respectively.

40. In the cross-examination of R.Ws. 1 and 2 by the petitioner's advocate, a suggestion was made that Exhibit B-16 came into existence on 27th November, 1951. This suggestion was based on the date which is contained in the last but one line on the first page of Exhibit B-16. The correct date that should have been put was 21st November, 1951 because the date that was being referred to was the last date for filing nominations. Exhibit B-16 shows that 27th November, 1951 might have been put at first and then corrected into 21st November, 1951. But the first respondent in his evidence states that he intended to write and that he actually wrote only 21st November, 1951 and not 27th November, 1951. If the petitioner's advocate's suggestion on this point is to be accepted, then any argument based on the absence of reference to Exhibit B-16 in Exhibit A-3 would fail to the ground, because on 29th November, 1951 when the 1st respondent wrote Exhibit A-3, he would certainly have known that there was a letter in existence with the date 19th November, 1951. Further, if it was so introduced on 27th November, 1951 with a prior date put on it, it must have been done with a purpose and that would be all the more the reason why the first respondent should have made a specific reference to it in Exhibit A-3. Therefore, it appears to us that the suggestion that Exhibit B-16 came into existence on 27th November, 1951 is an absolutely futile one.

1 O. L. A. 1

41. The evidence of R.Ws. 1 and 2 is to the effect that on 19th November, 1951 the first respondent went and gave exhibit B-16 in person to R.W. 1 and that on the next day he was again present when R.W. 1 wrote the endorsement, Exhibit B-18. The first respondent was, however, not given any endorsement in writing with regard to Exhibit B-16. At the time, the first respondent sent Exhibit A-3, he did not have even an acknowledgment from R.W. 1 about the receipt of Ex. B-16. All that he had at that time in writing was only the letter, Exhibit B-37, to the effect that he was not in the list of contractors and that as no work was pending, he must be deemed to have been removed from the list of contractors. The Executive Engineer had sent a communication to the petitioner that the first respondent was a contractor and that his final bills were pending. This communication was dated 27th November 1951 as is clear from a copy of it annexed to the main petition and which is marked as "Exhibit B". There is no evidence, but it is not impossible, that the first Respondent might have come to know about this also or about the telegram referred to in Exhibit A-4 and attempted to be marked in the course of the evidence of the petitioner. It is quite possible that on account of all these, he wanted a clarification of his position. It is not without significance that he wrote this letter to R.W. 1 and not to the Executive Engineer. If nothing had happened between 14th November, 1951 and 29th November, 1951, what possibly could have induced the first respondent to write to R.W. 1 to clarify the position of the first respondent with reference to the Department and not to the Executive Engineer, to whom he already wrote Exhibit B-14?

42. In considering the implication of Exhibit A-3 on Exhibits B-16 and B-18, we are unfortunately left in a field of surmise, because though Exhibit A-3 was referred to in the chief examination of R.W. 2, no questions were put to him in the course of cross-examination as to why he did not refer to Exhibit B-16 in Exhibit A-3 and no explanation was got from him on that point. Similarly also no questions were put to R.W. 1 with regard to the endorsements made by him and his Head Clerk on Exhibit A-3. In fact, his attention was not drawn to those endorsements when he was under cross-examination and they were not even separately exhibited.

43. The conduct of the first respondent from the beginning shows that he was very anxious to stand for the election. As early as on 28th July, 1951, he applied to the Sub Divisional Officer for finalising his bills and paying him the amount due to him and he specifically stated therein that he wanted to stand for elections. His bills had not been finalised and payment made till 14th November, 1951 and because the nomination papers had to be filed before 21st November, 1951, he chose to address the Executive Engineer by means of Exhibit B-14. The amount that he had to get from the Revenue Department under the contract relating to the village Chavadi was got by him on 19th November, 1951. The amount that was due from the Public Works Department in respect of the two contracts in question was Rs. 400/- and odd and it is not unlikely that when he did not find any chance of the payment being made in time, he might have thought it worth his while to give up the amount due to him. According to his evidence, he gave this relinquishment letter on legal advice and that fact is relating to the village Chavadi was got by him on 19th November, 1951. The respondent and his anxiety to stand for the Election, as is apparent from Exhibits B-13 and B-14, there is nothing unlikely if he had decided on legal advice to give up his claims and therefore gave the letter of relinquishment, Exhibit B-16.

44. As appears from Exhibits B-13 and B-14, the contractor was under the impression that a settlement of his claims was necessary before he could stand for election. So far as the Village Chavadi contract with the Revenue Department is concerned, he was able to get payment on 19th. If nothing took place with regard to the contracts with the Public Works Department, it appears to be unlikely that he would have got the nomination papers filed on 20th and 21st. Taking into account all these things, it appears to us probable that Exhibit B-16 must have been executed by the first respondent on 19th November, 1951.

45. So far as Exhibit B-18 is concerned, it is not referred to in the communication dated 29th November 1951 by the Assistant Engineer; but it is referred to in Exhibit B-39 which is the statement of the first Respondent in answer to the objections raised by the petitioner to his nomination. The positive evidence of R.Ws. 1 and 2 is that the endorsement Exhibit B-18, was made on 20th November, 1951. But it appears to us, that if it had really been made on that date, in all likelihood, R.W.-1 would have given an endorsement in writing to the first respondent. Otherwise, it is difficult to see what the object of making that endorsement, Exhibit B-18, was on 20th November 1951.

46. Exhibit B-35 is a copy of the G.O.Ms.No. 4682 (Public Works Department) dated 16th November, 1951. It shows that the Chief Engineer, Highways, had made a reference to the Government by letters dated 8th November and 13th November 1951 with reference to the position of contractors who wanted to contest elections. The G.O. gives certain procedure to be adopted by the Department concerned in connection with such contractors. In para. 2 of that G.O. it is stated that contractors should be permitted to terminate their subsisting contracts and also get their names deleted from the list of approved contractors provided that persons acceptable to the Chief Engineer are available and are willing to enter into a contract to execute the works under the existing terms and conditions without any loss to Government; and in paragraph 3 of the said G.O., certain points to be considered by the Chief Engineer in terminating these contracts are also mentioned. Copy of this Government order was not received in the office of the Assistant Engineer before 19th November 1951 or 20th November 1951. But R.W.-1 says that at the time Exhibit B-16 was brought to him, a private copy of this Government order was also brought by the first respondent and shown to him. R.W. 2 was not asked about this either in the chief-examination or in his cross-examination. The petitioner's advocate would contend that it was for the first respondent to put that question to him if he wanted to get a corroboration of the evidence of R.W. 1. On the other hand, it is argued on behalf of the first respondent that R.W. 1's statement that a private copy of that G.O., was shown to him stands uncontradicted, because no question was put to R.W. 2 in cross-examination about it, and should, therefore, be believed. As the G.O., is dated 16th November, 1951 it was perhaps not impossible for the first respondent to get a private copy thereof and in the absence of any questions put to him, there is no reason to hold that R.W. 1's evidence on that point is not true. The G.O. does not make any mention of the giving up of any money claims by the contractors but it says that there should be a final and complete settlement of rights and liabilities as between the Government and the existing contractor and that no sum of money should remain payable to him and nothing should remain liable to be supplied or done by him. It is quite possible that the first respondent being faced with that position, thought it best after legal advice to give up all his claims. The last sentence in Exhibit B-16 to the effect that he has no contractual obligations with the P.W.D., on account of works contracted by him in Cuddanah Sub-Division is also likely to have been prompted by the language of Exhibit B-35. R.W. 1 was questioned whether when the copy of the G.O. was shown to him, he had depended upon R.W. 2 for the authenticity of that G.O. The witness replied that he never depended upon that G.O. at all for the action that he took.

47. Giving our best consideration to this part of the case, we are of opinion that Exhibit B-16 is not an ante-dated document. There are some circumstances which would throw suspicion on the question as to whether Exhibit B-16 came into existence on the date it bears. The Tribunal would, therefore, proceed to a further discussion of the rights of parties on the footing that Exhibit B-16 alone was in existence on 19th November, 1951.

48. Section 63 of the Indian Contract Act entitles a promisee to dispense with or remit wholly or in part the performance of the promise made to him. In this case with regard to the money payable to the first respondent by the Government, the first respondent would be in the position of a promisee and the Government in the position of the promisor and therefore, the first respondent was entitled to dispense with the performance of the promise, which, in this case, is the payment of money by the Government to him. Under the Indian Law, a remission of performance need not be by an agreement as in England and no consideration is necessary for the same. It is unnecessary to refer to the several decision cited before us on this point. At page 337 of Pollock and Mulla's Contract Act (7th Edition), the learned Authors state, "That the intention of the present section to alter the rule of the Common Law is clear and has been recognised in several Indian Cases".

49. It is, however, contended that a document under which claims like these are released, is liable to stamp duty under Article 55 of the Indian Stamp Act. The contention of Mr. Bhujanga Rao for the first respondent is that in this case, the Government would be the party liable to pay the stamp duty and therefore, under the proviso to Section 3 of the Indian Stamp Act, the document is exempt from stamp duty. That contention is, however, not correct because under Section 29 of the Stamp Act, in the absence of an agreement to the contrary, the expense of providing proper stamp shall be borne in the case of a release by the person executing the instrument. In this case, it is the first respondent that executed the agreement and therefore, it is the first respondent that would be liable to pay the stamp. It, therefore, follows that Exhibit B-16 was liable to be stamped under Art. 55 of the Indian Stamp Act.

50. The contention is not, however, of very great value in this case because of Section 93 of the Representation of the People Act which says: "Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence during the trial of an Election Petition on the ground that it is not duly stamped or registered".

51. The only argument that Mr. Basireddi for the petitioner is able to advance on this part of the case is that the fact that the document is not executed on a proper stamp paper would go to probablise his contention that it is an ante-dated document and not that if it is genuine it would not affect the rights of parties. It is no doubt true that according to the evidence of R. W. 2, Exhibit B-16 was executed by him to the Sub Divisional Officer after legal advice, but we are not prepared to go to the extent of holding that simply because it was not executed on a stamp paper, it was not executed on the date it bears. The considerations that have already been adverted to, and especially the anxiety of the first respondent to stand as a candidate for the Assembly seat, would, in our opinion, outweigh the contention based upon the execution of the document on a plain paper.

52. Mr. Basireddi for the petitioner contended that in spite of the giving up of the claim for money by the first respondent by means of Exhibit B-16, the contracts themselves could not come to an end. According to him, there are certain obligations upon the contractor which would still remain and therefore, the first respondent should still be considered to have an interest in the contracts. Clause (2) of the conditions in Exhibits B-11 and B-12 makes some of the provisions of the Standard Preliminary Specifications applicable to these contracts. One of such clauses is clause (28) of Section D with the alteration mentioned in the contracts. Read with the alteration, clause (28) would read as follows:—

"Any defects, shrinkage or other faults which may appear before final payments for the works, arising in the opinion of the Executive Engineer from faulty materials or workmanship not in accordance with the directions and specifications or the instructions of the Executive Engineer or upon the directions in writing of the Executive Engineer and within such reasonable time as shall be specified therein, be amended and made good by the contractor at his own cost unless the Executive Engineer shall decide that the Contractor ought to be paid for the same at the rates agreed or such reduced or other rates as the Executive Engineer may fix and in case of default, the Executive Engineer may employ and pay other persons to amend and make good such defects, shrinkage or other faults and all damage and all expenses consequent thereon and incidental thereto shall be borne by the contractor".

Under condition No. (2) of the agreement, the Sub Divisional Officer has to exercise such functions as are delegated to the Executive Engineer under the relevant clauses of the Standard Preliminary Specifications in cases where the acceptance of the tender is within the powers of the Sub Divisional Officer in charge of the work. It is in evidence that the Sub-Divisional Officer has got powers to accept these agreements upto Rs. 2,500 [*vide* Madras P.W.D., Code para. 436 cl. (d) and the evidence of R.W. 11; and as the amounts covered by these agreements are less than Rs. 2,500, the Sub Divisional Officer was entitled to exercise the functions of the Executive Engineer under the Standard Preliminary Specifications.

53. According to the evidence of R.W. 1, who would be in the position of the Executive Engineer with reference to Exhibits B-11 and B-12, he had check-measured the work and found no defects whatever. Therefore, the possibility of any defects being found in the works is highly illusory in these cases. According to clause (28) upon which reliance is placed the contractor would be liable for rectification of defects such as those that may be discovered before the final payment of the bills. Therefore, it appears to us that in these two cases there was no possibility of the first respondent having to discharge any obligations from and after Exhibit B-16. Even if it should be held that by a unilateral transaction like Exhibit B-16 the contractor would not be in a position to get rid of his obligations under Exhibits B-11 and B-12, having regard to the positive evidence of R.W. 1 in this case that he had actually check-measured the work and that there were no defects whatever and that there were no recoveries to be made, it appears to us that there were really no obligations outstanding on the part of the first respondent under Exhibits B-11 and B-12.

54. The evidence of R.W. 1 shows that the bills have to be sent for pre-audit to the Executive Engineer. It would appear that the Executive Engineer's office maintains a register called 'Works Register' and that the accounts of the contractors are entered in that register and the purpose of the pre-audit is to ascertain if

there were any over-payments under the previous bills. In the course of cross-examination of R.W. 1, it was elicited that sometimes there are cases of minus bills. According to R.W.-1, there is a possibility sometimes of minus bills where the contract is a running contract and unless it is a running contract, there cannot be anything like a minus bill. It is not proved that the piece-work contracts are contracts of that type. Under condition N. 7 of Exhibits B-11 and B-12, a deduction of five per cent. of the value of work done by the contractor is made at the time of every bill for purposes of security deposit. In fact, the amount which the contractor had to lose by executing Exhibit B-16 is made up partly of the amounts so deducted from his bills. In view of the fact that there is no evidence before the Tribunal that in cases of piecework contracts there can be anything like minus bills. It is difficult to see how the mere fact that bills are subject to pre-audit by the Executive Engineer's office has any bearing on the question now under issue.

53. A number of rulings have been cited before us. We may, however, point out that none of the cases cited is exactly on all fours with the case before us. In the case before us, after the work was completed by the contractor, he chose to give up his claims for money due for work that he had done and the argument that he has an interest in the contracts is based on the possibility of his having to rectify defects that may subsequently be discovered. The cases that are cited before us are either cases in which the work was done and the bills were pending without the money being paid, or cases in which monies were also paid. But as we have stated, none of the cases cited are cases in which the contractor has chosen to give up what he had to get under the contracts.

56. In *Lo Feuvre v. Lankester* (118 English Reports 1241), one L., had contracted to construct some water works for commissioners, for supplying the town with water. Without fully carrying it out, he gave it up, by deed, to the commissioners, they agreeing to pay him a certain balance if they abandoned the works, or completed them and obtained a specified quantity of water. The works remained incomplete, but not abandoned, while L. was alderman and also while he was mayor. It was held that L. was not liable to penalty but the case was decided on the ground that it was taken out of the Statute as being a 'security for the payment of money only'.

57. In *Royse v. Birley* [20 Law Times Reports (1869) page 786] the respondent being a member of the firm which had before the election completed some contracts with the Secretary of State for India in Council, but did not receive payment until after the Election. The respondent's firm had also carried out an order after the election which had been given them by the Superintendent of the Broadmoor Lunatic Asylum. It was held that the Statute was not meant to apply to a person who was in the position only of a creditor of the Government, nor to a person entering into a contract with a Government agent without knowledge of his connection with the Government and that the election was not, therefore, void. The decision, however, turned upon the particular language of the Statute in that case which contained the words "executing, holding or possessing a contract". It was held that a contractor who had performed his part of the contract and who had only to receive money did not come within that language.

58. In *Ford v. Newth* (1901 Q.B.) the respondent had a contract with a Municipal Council under which he was to supply certain goods at specified prices for a period of 12 months. Afterwards, he applied to a Committee of the Council to be released from his contract. The committee resolved that subject to the approval by the Council, he be released from that date. Then he was nominated for the council. Subsequent to the election, the council approved the resolution of the committee releasing him. The question arose whether the nomination was good on the date it took place. It was held that it was invalid because on the date of nomination the contract was subsisting and the doctrine of relation back did not apply. This decision is not of great avail to the petitioner herein because there is no question of the application of relation back in this case and the matter is being viewed with regard to the rights of the parties arising from the relinquishment deed itself.

59. Practically all the cases bearing on this aspect of the matter were considered in an Irish Case *O'Carroll v. Hastings* (1905-2 Irish Reports 590). In that case, one H. took a printing contract from an Urban Council. At the date of the election he had completed the contract on his part, with the exception of the printing of the notice of the result of the election, but had not received payment of the contract price. After the election, he also printed notice of the result of election and thus completed the contract on his part. Thereafter, he attended a meeting of the council, signed the declaration of acceptance of office and acted in the proceedings and on that very day he was paid the amount of his contract before leaving. The question arose whether he was disqualified and whether he was liable to

the penalties imposed by the Statute. The learned Judges held that he was disqualified and that he was also liable for the penalties. At page 599, the learned Judge Lord O'Brien, L.C.J., stated as follows:

"At the time when, according to the case, Mr. Hastings acted by taking part in the proceedings—not, certainly, in relation to, or in connexion with, his contract; this is not necessary—but at the time he acted, that is to say before he was paid, the contract he had made with the council still existed—it was not merged, abandoned, rescinded, extinguished or satisfied; and if any demur was made as to payment before payment was actually made, he could have sued upon the contract specially; or if he sued for the work done at the request of the defendants, the contract would have been a part of his necessary proofs".

Another Judge, Gibson J., stated in his judgment at page 607:

"Where legal dispute is competent, and there has been no admission of debt, the same principle should apply".

At page 608, the learned Judge stated:

"At all events, until liability is admitted, or finally established—and it must be recollected that a verdict, judgment and award, are all subject to review for a time—and while dispute, as to performance, is competent, the contractor cannot be said to have no concern in the contract and its profit".

60. All the English Cases and the Irish Case have been referred to in *Satyendrakumar Das v. The Chairman of the Municipal Commissioners of Decca* (I.L.R. 58 Calcutta 180). In that case, the plaintiffs sued for a declaration that they were qualified to be elected commissioners of Decca Municipality. Their father's firm had supplied road material to the Municipality. Their bills for the materials supplied were passed by the Chairman but remained unpaid at the date when the nomination papers were sent. It was held that the contract had not terminated and that the plaintiffs were interested in it and consequently were disqualified from being elected. The *ratio decidendi* of that case is that when payment is outstanding to the contractor he must be considered to be interested in the contract. The principles laid down in *O'Carroll v. Hastings* (1905-2 I.R. 590) were followed in preference to the principle laid down in *Cox v. Truscott* (1905-21 T.L.R. 319, 92 L.T. 650). The additional fact that we have in our case *viz.*, the relinquishment of the claims by the contractor, was not there. Further, the language of the Statute in that case was that the party concerned should not have any share or interest in any contract of any kind whatsoever to which the Commissioners are parties and it was found that both at the time the contract was entered into and proceeded with and also at the time when the money became due, the plaintiffs were commissioners of the Municipality.

61. In *Athikesavulu Naidu v. Ekambara Mudaliar* (1939-1 M.L.J. 420) the money due to the contractor for the work done by him had been paid. The security deposit money was, however, still with the local Board and there was an agreement in respect of this security deposit under which repayment of the money was subject to pre-audit and any money that may fall due by the contractor as a result of pre-audit would have to be satisfied out of the security deposit and the balance only to be paid to the contractor. The rule of law that had to be construed by His Lordship Justice Pandrang Row was under Section 55(2)(c) of the Madras Local Boards Act (XIV of 1920) and that sub-section contained a proviso as follows:

"Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in any agreement in....."

(c) any agreement for the loan of money or any security for the payment of money only".

His Lordship held that the only contract which could possibly disqualify the party from standing for an election had been performed and the payment back of the security deposit was covered by another contract which came within the language of the proviso and the existence of such a contract did not affect the party's right to be nominated as a candidate. The main section 35(2) related to any subsisting contract between the person concerned and the local board.

62. It appears to us that there is a good deal of difference in the language between section 7 cl. (d) of the Representation of the People Act and Section 55(2)(c) of the Madras Local Boards Act because under section 7 clause (d) it is only a contract for the execution of works undertaken by the appropriate Government that would disqualify a person from standing as a candidate and not any contract. Further, the proviso which is found in the Local Boards Act is not found in Section 7 cl. (d). There was also a separate contract with regard to the paying back of the security deposit. That being so, there is a distinction on the facts between the case reported in *Athikesavali Naidu v. Ekambara Mudaliar* (1939-1 M.L.J. 420) and the case before us. At the same time, it appears to us that when we take into consideration that the 1st respondent released all his claims for monies due to him, it is practically on the same footing as the case of *Athikesavali Naidu* (1939-1 M.L.J. 420). The only difference is that whereas in that case there was a payment for the work done, in the case before us there is an abandonment of the claim due to the first respondent. Further, it appears to us that the case before us is exactly the case which is referred to in the exception made by his Lord O'Brien, L.C.J., at page 599 in *O'Carroll v. Hastings* (1905-2 I.R.590), where His Lordship stated that the contract before him was not merged, abandoned, rescinded, extinguished or satisfied. It is evidently to come within that exception that the first respondent in this case has given up his claims for monies due to him.

63. It appears to us that the first respondent was not subject to the disqualification mentioned in Section 7 clause (d) at the time of his nomination on 20th and 21st November, 1951.

64. *Issue No. 4.*—It follows from our findings on issues 1 to 3 that the election of the first respondent is not void.

65. *Issue No. 5.*—In the result, the petition has to be dismissed with costs. Advocate's fee Rs. 300/-.

Pronounced in open Court this 8th day of January 1953.

(Sd.) N. D. KRISHNA RAO,
Chairman.
(Sd.) D. RANGAYYA,
Member.
(Sd.) K. P. SARVOTHAMA RAO,
Member.

NOTE.—Bill of costs will follow.

Petitioner's witness

1. B. Rama Reddi (petitioner)

Respondents' witnesses

1. Sri K. Sreeramulu —
2. V. Chidanandam (1st respondent)

Petitioner's exhibits

- | | |
|----------------|---|
| A-1/27-12-1950 | . Estimate of work regarding "Kamalakur Tank". |
| A-2/2-5-1951 | . Forwarding Ex. B-12 from S. D. O. Cuddapah to Executive Engineer, Madanapalli. |
| A-3/29-11-1951 | . Letter from 1st respondent to S. D. O. Cuddapah requesting him to clarify his position in that department as contractor as he is contesting election. |
| A-4/10-12-1951 | . Do. regarding his relinquishment of final bills. |
| A-5/7-4-1952 | . Letter to S. D. O. Cuddapah by petitioner requesting to grant copies of certain documents. |
| A-6/26-11-1952 | . Telegram from petitioner to Executive Engineer, Madanapalli requesting him for information regarding payment of final bills of 1st respondent, (Chidanandam). |

Respondents' exhibits

- B-1/20-11-1951 . Nomination paper of 1st respondent for Badvel Constituency.
- B-2/20-11-1951 . Do. Do.
- B-3/20-11-1951 . Certified extract of entries in the Election Roll, Assembly Constituency relating to 1st respondent.
- B-4/20-11-1951 . Do. Do.
- B-5/21-11-1951 . Nomination paper of 1st respondent for Badvel Constituency.
- B-6/30-11-1951 . Order of Officer on Ex. B-1.
- B-7/30-11-1951 . Do. Ex. B-2.
- B-8/30-11-1951 . Do. accepting nomination of 1st respondent.
- B-9/30-11-1951 . Do. Do.
- B-10/30-11-1951 . Do. on Ex. B-5.
- B-11/30-11-1950 . Agreement of work executed by 1st respondent in respect of Kamalakur Tank contract.
- B-12/(no date) . Do. for repairs to Judge's quarters.
- B-13/28-7-1951 . Letter from 1st respondent to S. D. O. Cuddapah requesting to pay his final bills as he has to contest elections.
- B-14/14-11-1951 . Do. to Executive Engineer, Madanapalli requesting his name to be removed from the list of contractors.
- B-15/14-11-1951 . Letter from S. D. O. informing 1st respondent that his name has been removed from the list of contractors.
- B-16/19-11-1951 . Letter from 1st respondent to S. D. O. Cuddapah relinquishing his claims of the final bills.
- B-17/19-11-1951 . Endorsement on Ex. B-16 by S. D. O.
- B-18/20-11-1951 . Do. Do. accepting the relinquishment.
- B-19/ Entry relating to measurement of work done by 1st respondent to the District Judge's quarters at page 51 of M. Book).
- B-20/11-10-1951 . Entry at same page relating to check measurement of work by S. D. O.
- B-21/30-1-1952 . Endorsement of Executive Engineer passing the bill for Rs. Nil (at page 52).
- B-22/7-8-1951 . Measurement of work relating to Kamalakur Tank contract.
- B-23/17-11-1951 . Check measurement by S. D. O. (M. Book).
- B-24/18-3-1952 . Bill passed for Nil payment by Executive Engineer (M. Book page 77).
- B-25/26-11-1951 . Petitioner's letter to S. D. O. requesting to inform him about final payment of the bill of the contractors relating to special repairs to Judge's quarters.
- B-26/29-11-1951 . Reply by S. D. O. to petitioner's letter (Ex. B-25).
- B-27/28-11-1951 . Letter of Returning Officer Jammalamadugu to S.D.O. Cuddapah requesting for information regarding 1st respondent's contract works with the Government.
- B-28/29-11-1951 . Reply from S. D. O. to letter Ex. B-27.
- B-29/29-11-1951 . Telegram from S. D. O. to Returning Officer, Jammalamadugu informing him that 1st respondent has completed his work and no balance is due to be paid to him.
- B-30/29-11-1951 . Reply by S. D. O. Cuddapah to 1st respondent's letter dated 29-11-1951 (Ex. A-3) informing him that R.D.O. Jammalamadugu is telegraphically informed with the information called for.

- B-31/29-II-1951 . Letter by S. D. O. to Executive Engineer endorsing copies of the letter from R. D. O, Jammalamadugu and his reply. (Ex. B-30) and post copy of telegram (Ex. B-29) to R. D. O.
- B-32/31-I-1952 . Office copy of reply by S. D. O. to Executive Engineer copy of which was sent to Superintending Engineer.
- B-33/31-I-1952 . Reply by S. D. O. to Executive Engineer regarding the work and the amount of the bill relinquished by 1st respondent.
- B-34/15-II-1951 . Office copy of covering letter sent by S. D. O. to Executive Engineer forwarding the relinquishment letter of 1st respondent and recommending for passing his bills for nil payment.
- B-35/16-II-1951 . Copy of G. O. Ms. No. 4682/16-II-1951 received by S. D. O. from Executive Engineer relating to instructions regarding final payments and removal of candidates from contractor's list.
- B-36/27-II-1951 . Letter by petitioner to Executive Engineer requesting him to telegraphically instruct S. D. O. to give the information required regarding 1st respondent's status in the subsisting contracts.
- B-37/14-II-1951 . Original of Ex. B-15 sent to 1st respondent by S. D. O. informing him of his removal from the list of contractors.
- B-38/28-II-1951 . Objections of petitioner filed before the Returning Officer.
- B-39/30-II-1951 . Answers by 1st respondent to the objections raised by petitioner before the Returning Officer (Ex. B-38).
- B-40/30-II-1951 . Sworn statement of 1st respondent recorded by the Returning Officer.
- B-41/I-12-1951 . Office copy of letter by Executive Engineer to 1st respondent regarding the payment of his final bills.
- B-42/24-II-1951 . Order of removal of the name of 1st respondent from the list of contractors for Minor Irrigation and Rural Water Supply Works passed by Tahsildar, Sidhout.

(Sd.) N. D. KRISHNA RAO,

Chairman.

[No. 19/130/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.